Supreme Court, U.S.
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No. 97-1863

In The

Supreme Court of the United States

October Term, 1997

WILMA BEARDEN,

Petitioner,

vs.

QUORUM HEALTH GROUP INC.; and QHG OF GADSDEN INC., d/b/a GADSDEN REGIONAL MEDICAL CENTER,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent Quorum Health Group, Inc. owns 100% of Quorum, Inc., a holding company, which in turn owns 100% of Respondent QHG of Gadsden Inc., d/b/a Gadsden Regional Medical Center. There are no nonwholly owned subsidiaries.

RESPONSE TO STATEMENT OF THE CASE

Respondents ("GRMC") submit the following additional facts:

GRMC eliminated Petitioner's position during a reduction in force ("RIF") which resulted in the elimination of 54 positions throughout the hospital. Two of the seven full-time-equivalent employees in Petitioner's department (the Human Resources Department) were eliminated around this time, including Petitioner's position (H.R. Assistant). (R2-22, Bearden dep. at 10-11, 14, 33; R2-27, Sanders dep. at 12; R2-27, Ritchie dep. at 44; R1-19, Sanders Aff. ¶ 3). The decision to eliminate these particular positions was based on management's determination that the duties which the positions encompassed could be eliminated or transferred to others with the least impact on the department. (R2-27, Ritchie dep. at 22; Sanders dep. at 13-14).

At the time Petitioner's position was eliminated, other employees in her department performed duties different from hers. (R2-27, Sanders dep. at 37). GRMC did not replace her. Other employees absorbed some of her duties, while other duties were simply eliminated and are no longer performed by anyone. (R1-19, Sanders Aff. ¶¶ 5-6; R2-22, Bearden dep. at 72-73).

Around the time of her discharge GRMC offered Petitioner two other positions, both of which she rejected, despite position pay rate increases to accommodate her. (R2-22, Bearden dep. at 15-16, 21, 23-24). She testified that she would have refused any position at the hospital. (R2-22, Bearden dep. at 26).

When asked for every fact supporting her allegation that GRMC eliminated her position due to her age, she responded, "I was the only one over 40 . . . ***that's the only thing I have to go on***, that I was the old one in the department." (R2-22, Bearden dep. at 8, emphasis added).

REASONS FOR DENYING THE WRIT

There are no "compelling reasons" to grant a writ of certiorari. Sup. Ct. Rule 10. Contrary to the Petition, the United States Courts of Appeals have not rendered conflicting decisions on the rules of law at issue. Rather, they have followed well-established principles which this Court has set. These are fact-sensitive cases, and varying facts have produced a variety of results, but the same rules apply in each instance. The Eleventh Circuit clearly recognized that this case does not present novel issues or otherwise merit special treatment; it affirmed the district court with a one-word *per curiam* order (Appendix A to Petition) and likewise summarily denied Petitioner's rehearing petition (Appendix D to Petition).

As Petitioner's "Questions Presented" statement indicates, she asks the Court to address specific, narrowly-tailored evidentiary points. She raises a simple sufficiency-of-the-evidence claim. That is, while attempting to cast her appeal in terms of legal rule-making, in fact Petitioner asks the Court to review the sufficiency of circumstantial evidence in her unique case. A ruling in this case would have little if any precedential value. Petitioner has not stated good grounds for granting the writ. It should be denied.

ARGUMENT

Petitioner inaccurately asserts that the courts of appeals disagree as to the legal standards which an employee must meet in order to create a *prima facie* case of age discrimination in the context of a Reduction in Force ("RIF"). Following this Court's lead, the lower courts have applied consistent rules on this point. Factual particulars (and thus results) differ from case to case, but not legal principles. Given the general agreement on principles, this is not an appropriate matter for the Court to

consider. Not surprisingly, the Eleventh Circuit did not even deem this case worthy of a full opinion, nor has the Petitioner cited any other appeals or petitions pending before the Court which raise these points.

While the language of each circuit varies somewhat, the principles governing ADEA claims are clear.

First, an ADEA plaintiff has the burden or proving a *prima facie* case of discrimination either through direct evidence of discriminatory intent, or through circumstantial evidence which meets the test which this Court established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The circuit courts agree on this rule: *See, e.g., White v. Westinghouse Elec. Co.*, 862 F.2d 56, 59-60 (3rd Cir. 1988); *Denison v. Swaco Geolograph Co.*, 941 F.2d 1416, 1420 (10th Cir. 1991); *Chambers v. TRM Copy Centers Corp.*, 43 F.3d 29, 37 (2nd Cir. 1994).

Further, all agree that a RIF case (like this one) calls for the application of a modified version of the *McDonnell Douglas* test, under which a plaintiff seeking to establish the elements of a *prima facie* case of discrimination must show: (1) that she belongs to a protected class and was adversely affected by an employment decision; (2) that she was qualified to assume another position at the time of her discharge or demotion; and (3) evidence by which a factfinder might reasonably conclude that the employer intended to discriminate in reaching the decision at issue. *Barnes v. Southwest Forest Industries, Inc.*, 814 F.2d 607, 609 (11th Cir. 1987); *Montana v. First Federal Savings and Loans Ass'n of Rochester*, 869 F.2d 100, 104 (2nd Cir. 1989); *White*, 862 F.2d at 59-60; *Ingels v. Thiokol Corp.*, 42 F.3d 616, 621 (10th Cir. 1994).

Typically, as here, the parties agree on the existence of the first two factors, leaving the plaintiff to come forward with

evidence from which a factfinder could **reasonably** find discriminatory intent on the employer's part. Again, all courts are clear on the essential principle: The ADEA plaintiff has the burden of introducing evidence that supports a reasonable inference of intentional age discrimination. *Barnes*, 814 F.2d at 609-610. Under *McDonnell Douglas*, the central question is whether the plaintiff has presented sufficient evidence to permit a reasonable fact-finder to conclude that age was a **determinative factor** in the employer's decision. *White*, 862 F.2d at 59; *Cooper v. Asplundh Tree Expert Co.*, 836 F.2d 1544, 1547 (10th Cir. 1988). *See also Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610 (1993). "The particulars of the showing required to establish a *prima facie* case depend on the factual circumstances." *White*, 862 F.2d at 60. *See also McDonnell Douglas*, 411 U.S. at 802, n.13 (acknowledging that the facts necessary to establish a *prima facie* case under Title VII will vary with "differing fact situations"). In searching for evidence of unlawful discrimination, the ADEA does not require that younger employees be fired so that employees in the protected age group can be hired or retained. *Barnes*, 814 F.2d at 610.

In this case the particular facts which Petitioner presented did not support a reasonable inference that the employer intended to discriminate on account of Petitioner's age. Other cases with different facts may support a different result, but in this case Petitioner herself testified that her **only** "proof" of discrimination was that she was the oldest of the seven employees in her department. Other uncontroverted evidence in the record shows beyond question that even if the burden had shifted to the employer in this case, the same result would have obtained; when including Petitioner in its RIF, GRMC acted for legitimate, non-discriminatory business reasons. In such instances the presumption of discrimination created by a *prima facie* showing "simply drops out of the picture." *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 510-511 (1993).

Thus, even if the Court were inclined to alter the rules governing ADEA cases, or to examine in detail what particular circumstantial evidence constitutes a sufficient *prima facie* case, this would not present a good test case. The writ should be denied.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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